

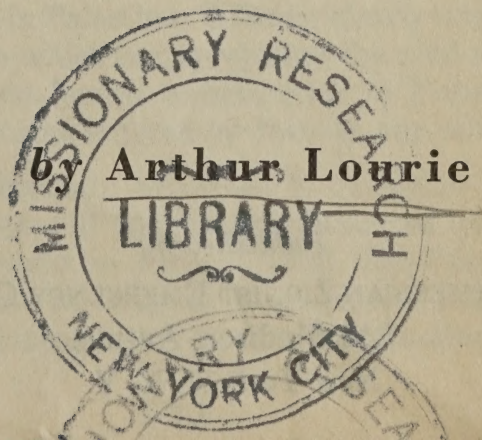
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Britain and Palestine

**An Examination of Present
British Policy in the Light
of the Mandate for Palestine**



by **Arthur Lourie**

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This study is based on a detailed treatment of the subject by Dr. Jacob Robinson and a group of associates.

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Britain and Palestine

GREAT BRITAIN'S rights in Palestine derive from the Mandate of the League of Nations: that document represents the constitutional framework within which and by virtue of which Great Britain exercises authority in Palestine. The Mandate confirmed the agreement made by the victorious Allied Powers at the end of the last war to the effect that Palestine should not be merged into the possessions of any one of them, but should be entrusted to Great Britain and administered by her as trustee for defined purposes and in accordance with specific conditions. It is the purpose of this study to consider the nature of the obligations thus imposed on Great Britain as Mandatory Power and the extent to which Britain's present policy as expressed in the Palestine White Paper of May 1939 is in conformity with those obligations.

The Mandate for Palestine was assigned to and accepted by Great Britain at a meeting of the Supreme Council of the Allied Nations at San Remo on April 25, 1920. The San Remo agreement expressly provided that the Mandatory Power was to be responsible for putting into effect the so-called Balfour Declaration issued by the British Government on November 2, 1917, in favor of the establishment of a National Home for the Jewish people. In terms of that Declaration the British Government undertook to use their best endeavors to facilitate the establishment of a National Home for the Jewish people in Palestine, "it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine, or the rights and political status enjoyed by Jews in any other country."

The Palestine Mandate comprises a Preamble and twenty-eight Articles, the terms of which were confirmed by the Council of the League of Nations on July 24, 1922. The Preamble reproduces the wording of the Balfour Declaration and recites the agreement of the Principal Allied Powers that the Mandatory shall

be responsible for putting that Declaration into effect. The operative clauses of the Mandate center round this objective. Thus Article 2 of the Mandate obliges the Mandatory to place the country under such political, administrative, and economic conditions as will assure the establishment of the Jewish National Home "as laid down in the Preamble." The duties thus imposed on the Mandatory are further defined in subsequent articles. In order to reconstitute the Jewish National Home, the Jewish people must be given full opportunity to return to Palestine and to settle there; accordingly Article 6 specifically requires the Mandatory to "facilitate Jewish immigration," and to encourage intensive cultivation and close settlement by Jews on the land including State and waste lands. To this end, too, there is provision for the introduction of an appropriate land system which shall have regard "to the desirability of promoting the close settlement and intensive cultivation of the land" (Article 11).

In the interests of the existing population Articles 2 and 6 provide respectively for the protection of the civil and religious rights of all the inhabitants of Palestine and for safeguarding "the rights and position" of other sections of the population. But these safeguarding clauses are themselves clearly predicated on the anticipated influx of Jews and the dominant role which they are expected to assume; they serve indeed to emphasize the paramount character of the Jewish National Home objective and cannot be read as in conflict with that objective. The special position accorded the Jews under the Mandate and the responsibility they are to take in rebuilding the Home, is indicated further by the provisions in Articles 4, 6 and 11, for a public body, the Jewish Agency, to represent all Jews who are willing to assist in the reestablishment of that Home. The Jewish Agency is empowered to advise and cooperate with the Administration of Palestine in economic, social, and other matters affecting the establishment of the Jewish National Home and the interests of the Jewish population of Palestine; nor is any other group granted rights of a similar nature.

It is evident that the whole structure of the Mandate is based on the objective of the establishment of the Jewish National Home. This was recognized by the Palestine Royal Commission, an authoritative official body which, on behalf of the British Govern-

ment, carried out a far-reaching inquiry in 1937 into the administration of the Palestine Mandate. After a careful consideration of the wording of the Mandate and of all the relevant circumstances, the Commission stated: "unquestionably . . . the primary purpose of the Mandate as expressed in its Preamble and its Articles is to promote the establishment of the Jewish National Home."¹

BEFORE considering further the meaning of the term "Jewish National Home" and the obligations thus imposed on the Mandatory Power, it will be convenient at this point briefly to indicate the main provisions of the Palestine White Paper of May 1939. The White Paper consists of an introduction and of three sections dealing respectively with the Constitution of Palestine, Immigration, and Land Settlement. The White Paper provides:

(a) for the eventual establishment of a Palestinian State in which, in view of the restrictions on Jewish immigration imposed by the White Paper, the Arabs would outnumber the Jews in the proportion of at least two to one;

(b) for the continuation of Jewish immigration for a period of five years from April 1939, during which period a maximum of 75,000 immigrants might be admitted into Palestine, and thereafter for the prohibition of all further Jewish immigration except with the acquiescence of the Arabs; and

(c) for severe restrictions on the acquisition of land by Jews, amounting, in terms of pursuant legislation, to total prohibition of such acquisition in much the greater part of Palestine.

The British Government has sought to justify the White Paper as being in conformity with its obligations under the Mandate to both Arabs and Jews. Indeed, it was only after categorical assurances by the Chamberlain Government that the new policy was in accordance with the Mandate² that it obtained the approval of the House of Commons, though even then by but a relatively small majority. However, the Permanent Mandates Commission of the League of Nations, which is the supervisory organ of the League in connection with the administration of the various League Man-

¹ Cmd. 5573, p. 39.

² 358 Commons, p.117.

dates, did not accept this contention of the Mandatory Power. The members of the Mandates Commission were unanimously of opinion that the policy of the White Paper was not in accordance with the interpretation of the Mandate hereto agreed upon by the Council of the League, the Permanent Mandates Commission, and the Mandatory Power; the inference being that if it were possible so to reinterpret the Mandate as to hold the White Paper not inconsistent with that instrument, such a reinterpretation would require the approval of the Council of the League of Nations. The Council of the League, however, has not considered the Palestine question since the issuance of the 1939 White Paper, and has accordingly not given its approval to that document. But the majority of the Commission went further and held that on *no* interpretation could the White Paper be deemed to be in conformity with the Mandate, "any contrary conclusion appearing to them to be ruled out by the very terms of the Mandate and by the fundamental intentions of its authors."³ So far as the League of Nations is concerned, therefore, the White Paper would appear to be entirely without legal authority, and the only competent organ of the League to have considered the White Paper has held it repugnant to the obligations imposed by the Mandate.

RETURNING then to an examination of the terms of the Mandate, it is necessary first to consider the meaning to be attached to the phrase "Jewish National Home." This expression appears originally in the Balfour Declaration itself, the terms of which, as already indicated, were incorporated in the Preamble to the Mandate. In its introductory paragraph the Balfour Declaration was described as a declaration of sympathy, approved by the Cabinet, with "Jewish Zionist aspirations." Those aspirations, as the authors of the Declaration were undoubtedly aware, aimed at the restoration of the ancient Jewish State in Palestine. The same thought underlies the reference in the Preamble to the recognition given by the Balfour Declaration to "the historical connection of the Jewish people with Palestine and to the grounds for reconstituting the Jewish National Home in that country." The word "*reconstituting*" can mean only to constitute again the

³ XXXVI PMC, p.275.

equivalent of what formerly existed; in this case, the Jewish State. Nor did the authors of the Balfour Declaration conceal the true intent of this phrase. Mr. Lloyd George, who was Prime Minister at the time of the Declaration, informed the Royal Commission in evidence that:

The idea was, and this was the interpretation put upon it (the Declaration) at the time, that a Jewish State was not to be set up immediately by the Peace Treaty without reference to the wishes of the majority of the inhabitants. On the other hand, it was contemplated that when the time arrived for according representative institutions to Palestine, if the Jews had meanwhile responded to the opportunity afforded them by the idea of a national home and had become a definite majority of the inhabitants, then Palestine would thus become a Jewish Commonwealth.⁴

Similarly President Wilson on March 3, 1919, stated, "I am persuaded that the Allied Nations, with the fullest concurrence of our own Government and people, are agreed that in Palestine shall be laid the foundations of a Jewish Commonwealth."⁵ Also, General Smuts, who had been a member of the Imperial War Cabinet when the Declaration was published, as well as other members of the Government, including Lord Robert Cecil in 1917, Sir Herbert Samuel in 1919, and Mr. Winston Churchill in 1920, spoke or wrote in terms that could mean only that what was contemplated was the eventual establishment of a Jewish State.⁶

Another indication is contained in the *Outline of Tentative Report and Recommendations* prepared by the Intelligence Section of the American Peace Delegation.⁷ Under the heading "Palestine," the following appears: (Paragraph 3)

to recognize Palestine as a Jewish State as soon as it is a Jewish State in fact.

The Palestine Royal Commission in basing itself on the testimony of Mr. Lloyd George, Mr. Winston Churchill and others already referred to, makes it clear why the term "National Home" was used instead of "State":

⁴ Palestine Royal Commission Report 1937, Cmd. 5479, p.24.

⁵ *Ibid.*

⁶ *Ibid.*

⁷ David Hunter Miller, "My Diary at the Peace Conference"—Vol. IV. pp. 263-264.

His Majesty's Government evidently realized that a Jewish State might in time be established, but it was not in a position to say that this would happen, still less to bring it about of its own motion. . . It could only undertake to facilitate the growth of a Home. It would depend mainly on the zeal and enterprise of the Jews whether the Home would grow big enough to become a State.⁸

In this connection reference may be made to the 1922 or Churchill Statement of Policy issued by the British Government at the time of the confirmation of the Mandate. The Statement affirms that the Balfour Declaration "is not susceptible of change"; at the same time it gives a definition of the Jewish National Home which, in the words of the Palestine Royal Commission (page 33), "has sometimes been taken to preclude the establishment of a Jewish State." The Royal Commission goes on to say, however, that:

though the phraseology was clearly intended to conciliate, as far as might be, Arab antagonism to the National Home, there is nothing in it to prohibit the ultimate establishment of a Jewish State, and Mr. Churchill himself has told us in evidence that no such prohibition was intended.

To sum up then, the establishment of the Jewish National Home was the primary obligation imposed on the Mandatory Power. It was contemplated at the time of the Balfour Declaration and the Mandate that the National Home might become a Jewish State. It would depend on the Jews themselves whether the State became a reality. But it was for the Mandatory Power to afford to the Jewish people the opportunity to bring that about.

BY contrast the Palestine White Paper of 1939 states categorically that it is not part of the policy of His Majesty's Government that Palestine should become a Jewish State. The reason given is that the Mandatory would regard it "as contrary to their obligations to the Arabs under the Mandate, as well as to the assurances which have been given in the past, that the Arab population of Palestine should be made the subjects of a Jewish State against their will."

So far as the "assurances which have been given in the past"

⁸ Loc. cit. p. 24.

are concerned, the only assurance to which Mr. Malcolm MacDonald, the Colonial Secretary responsible for the White Paper, was able to point when under cross-examination by the Permanent Mandates Commission, was the so-called "Hogarth Message" to the Sherif of Mecca in 1918. The existence of this document was announced for the first time in 1939, immediately prior to the issuance of the White Paper. Not only, however, was its wording altogether equivocal in so far as guarantees to the Arabs of permanent political supremacy in Palestine such as are contained in the White Paper, are concerned, but the fact that on no occasion prior to 1939 was the existence of this document referred to by the British Government or even by the Arabs, and that its contents were not disclosed to the League of Nations at the time of the ratification of the Mandate or subsequently, makes the Hogarth Message obviously irrelevant in considering the meaning to be attached to the solemn and public covenant of the Mandate. Under cross-examination by the Permanent Mandates Commission, Mr. MacDonald himself finally admitted that in view of these facts it was difficult to regard the Hogarth Message as a factor in the interpretation of the Mandate,⁹ and the British Attorney-General, speaking for the Government in the House of Commons, said of this message: "But it is not of sufficient importance for my honorable friend and myself to spend much time on it."¹⁰ It is clear that on this ground at least there can be no justification for the reversal of policy implicit in the White Paper—a reversal from the intended establishment of a predominantly Jewish Commonwealth in Palestine to that of a predominantly Arab one.

In suggesting further as the White Paper does, that the will of the Arabs was to be a decisive factor in determining the future status of the Jewish National Home, it is clear that the Mandatory introduces an element which would make the Mandate self-contradictory and which is in conflict with the intention of the authors of the Mandate. For Arab opposition to the establishment of the National Home was evident from the beginning, and had the will of the Arabs been a decisive consideration, the Mandate would never have been put into effect at all. In the words of the Vice-Chairman of the Permanent Mandates Commission:

⁹ XXXVI PMC, p. 185.

¹⁰ 347 Commons, p. 2184.

When it was said that the success of the undertaking (i.e., the Jewish National Home) was based on the hypothesis of Arab consent, there was introduced an element that was entirely new and unforeseen and really absurd.¹¹

Another argument was adduced, however, namely that the safeguarding clauses of the Preamble and of Article 6 of the Mandate in protection of "the civil and religious rights of existing non-Jewish communities" and of "the rights and position of other sections of the population" must be interpreted as justifying the establishment of a predominantly Arab State. The protection of the "civil and religious rights" of the existing non-Jewish communities, however, as Mr. MacDonald himself subsequently admitted before the Mandates Commission,¹² does not imply any right on the part of the existing population to political independence as a people; so to interpret the text indeed would be to make it self-contradictory, for it would clearly, in effect, render impossible the fulfillment of the National Home promise to the Jews.

The same holds true with regard to the provision of Article 6 that "while ensuring that the rights and position of other sections of the population are not prejudiced" the Palestine Administration shall facilitate Jewish immigration and close settlement on the land. To read the safeguarding proviso as meaning that the Arabs are to be guaranteed political independence or domination in Palestine is not merely thereby to safeguard rights which they did not have—for the Arabs of Palestine have been a subject people for centuries—but is to thwart alike the injunctions contained in Article 6 and the ultimate objective of the Balfour Declaration and the Mandate. The true intent of this article, as confirmed in a long series of statements by the Mandatory Power and the Permanent Mandates Commission, as well as by the consistent practice of the Mandatory Power, was in fact, in addition to protecting the civil and religious rights of "other sections of the population," to protect their economic position in the face of the anticipated influx of immigrants.¹³ As has already been suggested, the whole structure of the Mandate turns upon the idea of an ultimate Jewish majority, and the safeguarding clauses in the interests of other

¹¹ XXXII PMC, p. 32 (M. Rappard).

¹² XXXVI PMC, p. 104.

¹³ See below p. 12. Note that in the French text the word "position" appears as "situation" which, in ordinary French usage, connotes financial or economic position.

sections of the population are themselves the concomitants of this idea. Certainly these words were not intended to concede to the Arab population the guarantee of a permanent majority position.

The effect of the White Paper, however, is to ensure precisely the opposite of what was intended by the Mandate; that is to say, to exclude the possibility of a Jewish majority in Palestine, and while attaching to the Jewish community a permanent minority status, to provide "safeguards for *its* special position." Thus the clear intention of the Balfour Declaration and the Mandate is reversed and the very purpose and essence of the Home nullified.

SUPPORT for the policy of the White Paper in seeking to establish a predominantly Arab State in Palestine has also been sought in Article 2 of the Mandate which imposes on the Mandatory Power the duty to secure "the development of self-governing institutions."¹⁴ Concerned as this provision is with the political education of the population and the evolutionary development of political institutions in the Mandated territory, it is of a type incumbent on every Mandatory. But as Colonial Secretary MacDonald recognized when appearing before the Mandates Commission, that is very different from an injunction that Palestine must be granted political independence; "it is quite possible for self-governing institutions to function and develop in Palestine while the Palestine people as a whole are not citizens of an independent state."¹⁵

It is to be observed in this connection that there is express reference in the case of the other Mandates applying to former Turkish territory (e.g., Syria and Lebanon) to that paragraph of Article 22 of the Covenant of the League which provides that certain communities "formerly belonging to the Turkish Empire have reached a state of development where their existence as independent nations can be provisionally recognized." In the case of the Palestine Mandate, however, there is no such reference. Similarly Article 94 of the Treaty of Sevres stipulates that Mesopotamia and Syria should be provisionally recognized as independent states, but Article 95 of that Treaty dealing with Palestine makes

¹⁴ *Supra* p. 10.

¹⁵ XXXVI PMC, p. 120.

no reference to that possibility. It is indeed obvious that the obligation to develop self-governing institutions cannot be read in a sense irreconcilable with the main objective of the Mandate, namely, the establishment of the Jewish National Home. It is the latter obligation which makes the Palestine Mandate *sui generis*, and the exclusion in the Palestine Mandate, by contrast with these other Mandates, of any reference to political independence, constitutes an incidental but significant recognition of that fact.

The complete reversal of the purpose of the Palestine Mandate by the terms of the White Paper is indicated further by the tacit elimination in the latter document of the privileged position accorded the Jewish Agency under the Mandate. Not only does the White Paper in its proposals for the future of Palestine omit all reference to the Jewish people, and the Agency, but it provides in certain circumstances for consultation with the neighboring Arab states in framing plans for the future of Palestine. These states have, of course, no status at all under the Mandate so far as Palestine is concerned. Thus the Jewish Agency, as representative of the Jewish people, is excluded from any voice in these vital decisions, while at the same time a right of intervention is accorded to the Arab countries outside of Palestine. It is evident that this reversal of the plain intent of the Mandate is merely part of the larger plan to nullify the original purpose of that instrument, and that the constitutional provisions of the White Paper as a whole are in direct contradiction with the terms and intent of the Palestine Mandate.

THE second section of the White Paper deals with immigration. An essential feature of the Mandate is the duty imposed on the Mandatory Power to facilitate Jewish immigration. As was stated by General Smuts, who was one of the authors of the Balfour Declaration: "A home is a place to which one goes back . . . you cannot talk of a National Home, if the Jewish people cannot get back to Palestine as their National Home."

Article 6 of the Mandate accordingly provided that the Mandatory "while ensuring that the rights and position of other sections of the population are not prejudiced, shall facilitate Jewish

immigration under suitable conditions.” It will be observed that the Mandatory is required not merely to permit, but actively to facilitate Jewish immigration into Palestine. In considering the effect of this Article, the 1922 Statement of Policy previously referred to¹⁶ explains that “this immigration cannot be so great in volume as to exceed whatever may be the economic capacity of the country at the time to absorb new arrivals.” That is to say, the interpretation to be placed on the provisos of the Mandate in the interest of the non-Jewish sections of the population—an interpretation consistently accepted by both the Mandatory Power and the Permanent Mandates Commission and confirmed by the practice of the Mandatory—was that the only limitation on the Mandatory’s duty to facilitate Jewish immigration was the economic capacity of the country to absorb new immigrants. As was explicitly stated in the “official and authoritative comment” on British policy in Palestine contained in the letter of Prime Minister Ramsay MacDonald to Dr. Weizmann of February 13, 1931,¹⁷ “the considerations relevant to the limits of absorptive capacity are purely economic considerations” and this is “the *sole* criterion.”

The Palestine White Paper of May 1939 abandons this criterion. An arbitrary figure of 75,000 is named as the maximum number of Jewish immigrants to be admitted in the five-year period from April 1939. Thereafter Jewish immigration is to cease, except with the consent of the Arabs. That five year period has now elapsed and apart from a balance of some thousands of immigration permits out of the original 75,000 quota which had not been used because of war conditions and the time limit on which has been extended, no new Jewish immigration is in effect now permissible. The proviso that Jewish immigration may continue if the Arabs give their consent, can be ignored. Not merely is this provision contrary to the intent of the Mandate, but it is evident that there is no possibility that such consent will be granted. The change which the White Paper thus introduces in regard to the Mandatory’s duties with respect to Jewish immigration affects not only the interpretation of Article 6, but it goes to the root of the whole Mandate and is in flat contradiction with its content and purposes. In effect, the White Paper thereby destroys the possibility of carry-

¹⁶ *Supra* p. 8.

¹⁷ XX PMC, p. 73.

ing out the main objective of the Mandate, namely, the establishment of the Jewish National Home. In the words of the Permanent Mandates Commission:

The Mandate imposes on the Mandatory Power the obligation to promote the creation in Palestine of a National Home for the Jewish people, and hence any request designed to put an end to Jewish immigration *runs counter to the Mandate* and must be rejected.¹⁸

ARTICLE 6 of the Mandate enjoins the Mandatory Power to encourage close settlement by Jews on the land, subject, only, as with the duty to facilitate immigration, to the qualifying clause in regard to the rights and position of other sections of the population; and Article 11 imposes the obligation to “introduce a land system appropriate to the needs of the country, having regard, among other things, to the desirability of promoting close settlement and intensive cultivation of the land.” It is evident that if the Mandatory Power is obliged to *encourage* close settlement of Jews on the land, the Jews are at least entitled not to be hindered from settling on their own initiative—a conclusion indeed which seems in any case obvious in regard to the country destined to become their National Home.

In terms of the White Paper and of the pursuant Land Transfer Regulations promulgated in 1940¹⁹ with retroactive effect as from May 1939, Palestine is divided for purposes of land purchase into three zones:

- (I) a “free” zone of about 500 square miles;²⁰
- (II) a “prohibited” zone of about 6500 square miles, in which no transfer (including any lease or mortgage) of agricultural property belonging to non-Arabs may be made to anyone not a Palestinian Arab except with the special permission of the High Commissioner;
- (III) a “restricted” zone of about 3000 square miles, in which, too, there is, with very limited exceptions, a general pro-

¹⁸ Report, approved by the Commission, of M. Orts on an Arab petition (XXV PMC, pp. 136 and 154.)

¹⁹ Supplement No. 2 to the Palestine Gazette Extraordinary No. 988 of Feb. 28, 1940.

²⁰ 358 Commons 508-9.

hibition on the transfer of Arab-owned property to non-Arabs; so that in effect the position in this zone is little different from that in the prohibited zone.

That is to say, henceforth Jewish land settlement is in effect to be prohibited in about 95 per cent of the total area of Palestine.

It is evident that these provisions can hardly be reconciled with the obligation imposed on the Mandatory to encourage close settlement by Jews on the land. In terms of Article 6 of the Mandate, the Mandatory Power is released from this active duty only when a situation arises where the further encouragement of Jewish settlement is likely to prejudice the rights and position of other sections of the population. Neither Article 6, however, nor any other provision of the Mandate entitles the Mandatory to prohibit land purchases by Jews in their quality as Jews. Nor can any authority be adduced for the proposition that a discriminatory and inferior legal status in this respect may be imposed on the Jewish as compared with the other inhabitants of Palestine.

On the contrary, Article 15 of the Mandate provides that "no discrimination of any kind shall be made between the inhabitants of Palestine on the grounds of race, religion or language." The Royal Commission in reviewing the similarly worded provisions of the Palestine Order-in-Council (as amended in 1923), stated that:

It seems clear that under the Order-in-Council quoted above the High Commissioner cannot enact a law that in certain areas land may not be sold to Jews.²¹

It seems no less clear that such discriminatory legislation is prohibited by Article 15 of the Mandate.

It is evident that the White Paper provisions in regard to land purchase by Jews are not social but racial in character. That is to say, they are not directed at maintaining the economic position of the Arab peasant proprietor but are intended rather to ensure Arab possession of the greater part of Palestine. As was pointed out by the Royal Commission in quoting the expert report of Sir Lewis French, there has been taking place in Palestine "the ab-

²¹ Royal Commission Report, p. 221.

sorption, gradual but inevitable, of the Arab peasant proprietor by the Arab effendi or capitalist landlord," amounting in one sub-district to the transfer in a single decade of 30% of the land from Arab peasants to Arab capitalists.²² The land legislation under the White Paper, however, does nothing to protect the Arab peasant as against the Arab effendi. Its sole purpose is to exclude Jews as Jews from settlement in these areas.

The authors of the White Paper²³ argue that the Mandate itself is based on racial discrimination, and that the obligations toward Jews and Arabs, respectively, could not be carried out "without administration and if necessary, legislation, which discriminates between the two communities." But it is clear that these exceptional provisions in *favor* of the Jewish people can certainly not be made a basis for discrimination *against* them. The conclusion is that the Land Transfers Regulations constitute an infringement of both Articles 6 and 15 of the Mandate.

WHATEVER the political circumstances which led to the formulation of the policy of the Palestine White Paper, it seems clear from the foregoing that that policy is in direct conflict with the intent and purpose of the Mandate. Whether in regard to Constitution, to Jewish immigration, or to Jewish settlement on the land, the provisions of the White Paper are designed not to further but to thwart the main objective of the Mandate—namely, the establishment of the Jewish National Home. The White Paper indeed, while paying lip service to the Mandate, seeks to effect the very contrary of what that document proposed and is in conflict alike with its letter, its spirit and its intent.

The Palestine White Paper of May 1939 was not the only statement of policy on behalf of the British Government which sought to define or re-define Britain's obligation under the Mandate. Reference has already been made to the 1922 (Churchill) White Paper.²⁴ Eight years later in 1930, a further Statement of Policy was issued, the so-called Passfield White Paper. This Statement of Policy, which was in effect subsequently revoked by the

²² Royal Commission Report, p. 260.

²³ 358 Commons, p. 521.

²⁴ See pp. 8, 13 above.

Prime Minister's letter of February, 1931 to Dr. Weizmann,²⁵ contained proposals for restricting Jewish immigration on grounds other than the absorptive capacity of the country, and for limiting Jewish settlement on the land. The restrictions proposed, however, were far less drastic in character than those provided for in the 1939 White Paper. The legal implications of the Passfield White Paper, in view of Britain's obligations under the Mandate, were discussed in a letter to the *London Times* (November 4, 1930) by two English jurists of great distinction, Sir John Simon, now Lord Chancellor, and Lord Hailsham, a former Lord Chancellor.

After considering the proposed restrictions in the light of the Preamble and of Articles 2 and 6 of the Mandate, Sir John Simon and Lord Hailsham stated unequivocally that the 1930 White Paper "appears to us to involve a departure from the obligations of the Mandate," and they urged that the British Government should not enforce the paragraphs challenged unless and until an advisory opinion in favor thereof had been obtained from the International Court of Justice at the Hague. The criticism of these eminent lawyers was undoubtedly an element in the subsequent reversal of the policy of the Passfield White Paper. It is a criticism which applies with far greater force to the provisions of the 1939 White Paper, which seek not merely to restrict Jewish immigration and land settlement, but (with minor exceptions so far as land settlement is concerned) to prohibit them entirely.

It is relevant to point out that there is also distinguished support in political circles in Britain for the proposition that the 1939 White Paper is in conflict with the Mandate. Thus Mr. Winston Churchill, himself a former Colonial Secretary, in a speech in the House of Commons,²⁶ described the White Paper as "a unilateral denunciation of the obligations accepted in the Balfour Declaration and the Mandate . . . a plain breach of a solemn obligation." Mr. Leopold Amery, at present Secretary of State for India, who, as Secretary of the War Cabinet during the last war had been closely associated with the discussions which preceded the Balfour Declaration, also spoke in similar terms, as did others who are today members of the British Government, including Mr. Herbert

²⁵ See page 13 above.

²⁶ Commons, May 23, 1939.

Morrison and Sir Archibald Sinclair. These views were echoed in the House of Lords by the Archbishop of Canterbury when he said:

... After all their hopes, they (the Jews) shall return in their National Home to that minority status which has been their lot through long centuries in every part of the world. I venture to think that whatever a National Home may have meant ... it surely cannot have meant that.²⁷

OUR purpose here is not to enter into any detailed consideration of the political aspects of the White Paper issue. It is nevertheless proper in conclusion, to consider briefly the question as to what concern the problem raised in this memorandum may be of the American Government and people. It is suggested that that concern is founded on historical, political and humanitarian grounds. The interest of the American Government in the proposal to establish a National Home for the Jewish people was originally manifested when it took an active and important part in the issuance of the Balfour Declaration in 1917. Thus it participated in the formulation of the terms of the Declaration, and the Declaration was not issued until the consent of the President of the United States had been obtained. The action of the executive branch in this regard was subsequently approved and ratified by unanimous Resolution of the United States Congress in 1922. Nor did America wash her hands of the Palestine question during the deliberations on the Mandate and after its confirmation. The United States did not become a member of the League, but as one of the Allied and Associated Powers it insisted, in the course of a lengthy interchange of official notes, on its equality of status with the other powers concerned, in respect of rights of information and consultation as well as with regard to the ultimate disposition of the mandated territories.

This position was expressed in the British-American Palestine Convention of 1924. The Convention recited in full the terms of the Preamble and Articles of the Palestine Mandate, and then provided that "subject to the provisions of the present Convention, the United States consents to the administration of Palestine by His Britannic Majesty, pursuant to the Mandate recited above." The covenant contained in the Mandate for the benefit of the Jewish people was thus

²⁷ 113 Lords, Col. 113.

not only a covenant between Great Britain and the fifty-one other members of the League of Nations, but a covenant also between the British Government and the Government of the United States. In pursuance thereof the American Government is entitled to insist that the obligations undertaken by the Mandatory be performed.

But the interest of the United States in Palestine and in a solution of the Jewish problem rests also on broader grounds. As much was attested to by Assistant Secretary of State Breckinridge Long recently in evidence before the House Foreign Affairs Committee when he said: "But the question of Palestine has a larger significance . . . we have been interested and will continue to be interested from the point of view of the larger aspects of world security and of world peace, as well as the rights of humans and humanitarian sympathies and the religious sentiments involved."²⁸

The tragedy of the Jewish situation in Europe and the systematic program of extermination pursued by the Hitler government, have given a vastly greater urgency to the need for implementing the undertaking to establish a Jewish National Home. The problem of the Jews of Europe and of their resettlement, either in the lands of their birth, or, as many of the survivors will no doubt desire, in new homes abroad, is one which the United Nations, interested in establishing a new world founded on peace, freedom and security, cannot escape. With the solution of that problem, the Palestine question is intimately linked. It has been the purpose of this study to indicate how the conception contained in the Balfour Declaration and the Mandate of the restoration of the Jewish people as a nation in its own land to a place among the nations was whittled down in letter and in spirit until what remained in the White Paper of 1939 was no more than a mockery of the original design. The Balfour Declaration and the Mandate contemplated a radical solution which without harm to the existing population would assure the Jewish people in their ancient homeland a place of their own to which Jews would be entitled to go as of right and not on sufferance. The need and justification for such a policy is far stronger today than it ever was.

²⁸ Hearings, Committee on Foreign Affairs, 78th Congress, Session on H. Res. 350 and 353.

